

# DRAFT ORDINANCE

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,  
ADDING ARTICLE 15 TO CHAPTER 10 OF THE FRESNO  
MUNICIPAL CODE RELATING TO REGULATIONS FOR THE  
PROTECTION OF THE SAN JOAQUIN RIVER AND BLUFFS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 15 is added to Chapter 10 of the Fresno Municipal Code to read:

## ARTICLE 15

### SAN JOAQUIN RIVER AND BLUFF PROTECTION INITIATIVE

- Section 10-1501. Title
- 10-1502 Purpose
- 10-1503. Construction with Other Laws
- 10-1504. Application
- 10-1505 Definitions
- 10-1506 Vehicular Access
- 10-1507. Prohibited Acts
- 10-1508. Penalties and Enforcement
- 10-1509. Posting
- 10-1510. Defensible Space Requirements
- 10-1511. Progress Review

SECTION 10-1501. TITLE. This ordinance shall be known as the “San Joaquin River and Bluff Protection Initiative.”

SECTION 10-502. PURPOSE. The Council finds and declares that the San Joaquin River and southerly San Joaquin River Bluffs are a unique natural resource that must be protected and preserved for the enjoyment of, and appreciation by, present and future generations in the City of Fresno. The Council further finds and declares that the integrity of the natural landscape is threatened by pollution and damage caused by

vehicular and pedestrian traffic and activities that are not consistent with conservation of these precious natural resources.

The Council further finds and declares that vegetation fires along the San Joaquin River and to the southerly San Joaquin River Bluffs are particularly difficult to contain due to the ample flammable vegetation and difficult terrain and pose a threat to occupied structures in the area.

The ordinance enacted below is deemed necessary for the protection of the general health, safety, and welfare of people and property on the southerly San Joaquin River Bluffs.

**SECTION 10-1503. CONSTRUCTION WITH OTHER LAWS.** No provision of this article is intended to supersede or be in conflict with any federal regulation or any statute, rule or regulation of the state relating to the San Joaquin River or southerly San Joaquin River Bluffs, and in the event of any conflict between the provisions of this article and any such federal or state regulation, the provisions of this article so conflicting shall be deemed superseded by such statute, rule or regulation, and of no force or effect. Provided further, that other provisions of this article not so in conflict shall not be affected thereby and shall remain in full force and effect.

**SECTION 10-1504 APPLICATION.** This article shall apply to the area between the midpoint of the San Joaquin River representing the boundary between the city of Fresno and Madera County to the bluff edge as defined below or the southernmost boundary of the Bluff Preservation overlay district as defined in Section 12-243 of this Code, whichever is further south.

## SECTION 10-1505. DEFINITIONS

(a) “Bluff” means the soil surface, substratum and area between the "Bluff Toe" and the "Bluff Edge."

(b) “Bluff Edge” means the first or southernmost point of tangency, within three hundred feet of the "Bluff Toe," or a ten per cent (10:1) slope line and the convex soil surface (or the break between slopes less than ten per cent and those greater than ten per cent).

(c) “Bluff Face” means that area between the "Bluff Edge" and "Bluff Toe."

(d) “Bluff Influence Area” means the area within three hundred feet south of the "Bluff toe" of the San Joaquin River Bluffs.

(e) “Bluff Preservation Overlay District” is an overlying zoning district intended to provide special land development standards that will preserve the integrity of the natural landscape of the southerly San Joaquin River Bluffs, adjacent properties, and adjacent open spaces as areas of special quality by reason of the topography, geologic substratum, and environment of the area. The regulations of this district are deemed to be necessary for the preservation of the special qualities of the southerly San Joaquin River Bluffs, and for the protection of the health, safety and general welfare of owners and users of property within the River Bluff Influence Area. The "BP" District shall apply to the River Bluff Influence Area, an area 300 feet wide measured southerly from the toe of the bluff.

(f) “Bluff Toe” means the point of tangency of a twenty per cent (5:1) slope line and the concave soil surface (or the break between slopes less than twenty per cent and those greater than twenty per cent).

#### SECTION 10-1506. VEHICULAR ACCESS.

(a) No person shall operate any motor vehicle, motorcycle, motor-driven cycle, minibike, or other vehicle by which any person or property may be propelled, moved, or drawn, excepting a vehicle or device moved by human power, below the bluff edge except upon roads designated for vehicular use.

(b) Exceptions.

(1) This section shall not apply to public officers in the discharge of their duties.

(2) This section shall not apply to a self-propelled wheelchair, motorized tricycle, or motorized quadricycle, if operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

SECTION 10-1507. PROHIBITED ACTS. The following acts are prohibited below the bluff edge:

(a) Overnight camping except with appropriate permits and approvals;

(b) Depositing, placing, throwing or in any manner disposing of any rubbish, trash, garbage, can, bottle, glass, wood, paper or any decaying or putrid matter of any kind whatsoever except in containers provided for such purpose;

(c) Lighting of any fires or open flames, including but not limited to cooking fires and barbecues, except in designated areas. This prohibition shall

not apply to cooking fires, barbecues, or outdoor fireplaces upon any private residential property which is subject to the provisions of this Article;

(d) Possession or use of fireworks, notwithstanding the provisions of Section 10-53302.5(b);

(e) Entering, remaining or loitering between the following hours:  
10:00 p.m to sunrise from March through October; 6:00 p.m. to sunrise from November through February . This shall not apply to individuals whose residence is located below the bluff edge; individuals with appropriate permission or authorization to be on private property located below the bluff edge; campers with appropriate permits and authorization; peace officers and other official officers in the discharge of their duties.

(f) Discharging of firearms, bows, air rifles, paintball guns or other projectiles of a weaponized nature except in areas or facilities specifically designated for such activities.

(g) Removal of vegetation or excavation of any rock or stone except when part of an authorized management program or with appropriate permits and approvals or pursuant to the provisions of Section 10-1510 regarding defensible space;

(h) Removal or disturbance of archaeological or cultural artifacts unless with appropriate permits and approvals;

(i) Removing, defacing, damaging or destroying any sign, gate, garbage can, or structure or facility which has been posted in accordance with the provisions of Section 10-1509.

SECTION 10-1508. PENALTIES AND ENFORCEMENT. Failure to comply with the provisions of sections 10-1506 or 10-1507 shall be punishable as a misdemeanor.

SECTION 10-1509. POSTING. The Chief Administrative Officer or his or her designee, as well as those having jurisdictional authority, shall have the authority to post and maintain appropriate signs at such locations as in the opinion of the Chief Administrative Officer or designee will give reasonable notice to the public of the provisions of this article.

SECTION 10-1510. DEFENSIBLE SPACE REQUIREMENTS.

(a) Definitions. For the purposes of this section, the following definitions shall apply:

(1) “Aerial Fuel” means all live and dead vegetation in the forest canopy or above surface fuels, including tree branches, twigs, cones, snags, moss and high brush. Examples of aerial fuel include trees and large bushes.

(2) “Defensible space” is the area within the perimeter of a parcel where basic wildfire protection practices are implemented, providing the key point of defense from an approaching wildfire or escaping structure fire. Defensible space can be created by removing dead vegetation, separating fuels, and pruning lower limbs.

(3) “Firebreak” means an area of land within thirty (30) feet of an occupied dwelling and structure in which dangerous accumulation of flammable vegetation or other combustible growth has been removed and cleared away. The creation of a firebreak shall not require the removal of

single specimens of trees or other vegetation that is well pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to any dwelling or structure.

(4) “Flammable and combustible vegetation” means any fuel.

(5) “Fuel” means live or dead vegetative material which is combustible during normal summer weather. This does not include fences, decks, woodpiles, or trash.

(6) “Horizontal Clearance” means the distance between aerial fuels, such as the outside edge of tree crowns or high brush. Horizontal clearance helps stop the spread of fire from one fuel to the next.

(7) “Surface Fuel” means loose surface litter on the soil surface, normally consisting of fallen leaves or needles, twigs, bark, cones and small branches that have not yet decayed enough to lost their identity; also grasses, forbs, low and medium shrubs, tree seedlings, heavier branches and downed logs.

(9) “Vertical Clearance” means the distance between lower limbs of aerial fuels and the nearest surface fuels and grass or weeds. Vertical clearance helps prevent fire from moving from shorter fuels to taller fuels.

(b) Defensible Space Requirement. Any person, corporation or other entity owning, leasing, occupying or directly controlling or having charge of any property subject to this article shall comply with the following standards for

maintaining defensible space with respect to the area surrounding any inhabited dwellings and structures from April 15 through September 30 of each year as follows:

(1) Maintain a firebreak by removing and clearing away dangerous accumulation of flammable vegetation and other combustible growth within thirty (30) feet of each inhabited dwelling and structure. Single specimens of trees or other vegetation may be retained provided they are well spaced, well pruned, maintained in a live condition and create a condition that avoids the spread of fire to other vegetation or to a building or structure. Grass four (4) inches or shorter in height may be retained where necessary to prevent erosion or when isolated from other fuels.

(c) Failure to Maintain Defensible Space. It is unlawful and a public nuisance for any person, corporation or other entity owning, leasing, occupying, directly controlling or having charge of any property subject to this article to maintain the following conditions on said property which endanger the public safety by creating a fire hazard:

(1) A dangerous accumulation of flammable vegetation or combustible growth located within thirty (30) feet of an occupied dwelling and structure which prevents the creation of a firebreak and endangers public safety by creating a fire hazard; or

(2) Brush or other flammable material within ten feet of a propane tank.



(3) A dangerous accumulation of dry grass, dead or decayed trees, weeds, brush or leaves, needles, or other dead vegetative growth located adjacent to any occupied dwelling or structure such that it endangers public safety by creating a fire hazard.

(d) No person shall be required to maintain any clearing on any land if that person does not have the legal right to maintain the clearing, nor is any person required to enter upon, remove vegetation or damage property that is owned by another person without the consent of that person.

(e) The prohibitions contained above shall not apply to land or water area that are acquired or managed for one or more of the following purposes or uses:

(1) Habitat for endangered or threatened species, or any species that is a candidate for listing as an endangered or threatened species by the state or federal government;

(2) Lands kept in a predominantly natural state as habitat for wildlife, plant, or animal communities;

(3) Open space lands that are environmentally sensitive parklands;

(4) Other lands having scenic values, as declared by the local agency or by state or federal law;

(5) Cultivated agricultural land or land used for animal grazing.

(f) Enforcement. This section shall be enforced pursuant to the provisions of Chapter 10, Article 6 relating to abatement of public nuisances.

SECTION 10-1511. PROGRESS REVIEW. A review of the effectiveness of this ordinance shall be conducted after one (1) year, or at any time deemed necessary by the City Council. The City Council may direct staff to provide any information necessary for evaluating the effectiveness of this ordinance.

SECTION 2. SEVERABILITY. The City Council declares that the provisions of this ordinance are severable. If, for any reason, any sentence, paragraph, or section of this ordinance is determined by a court of competent Jurisdiction to be invalid, such determination will not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the one hundred eightieth day (six months) after its passage.

\* \* \* \* \*

STATE OF CALIFORNIA    )  
COUNTY OF FRESNO     ) ss.  
CITY OF FRESNO         )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

Mayor Approval: \_\_\_\_\_, 2010

Mayor Approval/No Return: \_\_\_\_\_, 2010

Mayor Veto: \_\_\_\_\_, 2010

Council Override Vote: \_\_\_\_\_, 2010

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ  
City Attorney

BY: \_\_\_\_\_  
Michael G. Vigilia, Deputy

MGV:ns [50244ns/ord]- 1/14/10